

17 January 2020

Mrs Ow Foong Pheng
Permanent Secretary (National Development)
Ministry of National Development
5 Maxwell Road #21/22-00
Tower Block MND Complex
Singapore 069110

Dear Mrs Ow,

RECTIFICATION ORDER UNDER SECTION 43D(2) OF THE TOWN COUNCILS ACT

We refer to your letter dated 3 January 2020.

2. We wish to record our surprise that the Minister is invoking Section 43D(2) of the Town Councils Act (TCA) to compel the Town Council to comply with the Ministry's orders, a shift by the government from its earlier position in Parliament.
3. During the debate on the Parliamentary Motion filed by the Deputy Prime Minister and Minister for Finance on 5 November 2019, the Second Minister for Finance Indranee Rajah had affirmed that it was the Town Council who had jurisdiction to decide on whether recusal of MP Sylvia Lim (MP Lim) and MP Low Thia Khiang (MP Low) from financial oversight of Town Council matters was required and that Parliament was not in a position to compel the Town Council to take any action.
4. More specifically, during the same debate, Second Minister for National Development Desmond Lee directly addressed a query raised by a Nominated MP as to why the Government was asking Parliament to pass a resolution with no legal force, when the Minister for National Development could conceivably use his powers under Section 43D of the TCA. In response, Minister Lee told the House that he was familiar with the provision, and noted that Section 43D was passed years after the actions taken by MP Lim and MP Low in 2011. He further highlighted that Section 43D gave powers to the Minister to act after a report or compliance review had been undertaken under the amended Act or after an investigation (See Annex A).
5. We share these opinions of the Minister that Section 43D is not applicable to the facts due to concerns about retroactivity and the pre-conditions not being met. We are thus doubtful as to the propriety of the Rectification Order issued under Section 43D(2).
6. Despite our reservations above, we note the concluding paragraph of your letter, which states *"Your attention is drawn to Section 43D(4) and 48(1) of the Act. Failure by the Town Council, the Chairman or the Secretary to the Town Council, or an individual purporting to act in any such capacity to comply with these Order is an offence under the Act."* More importantly, the Town Council wishes to direct its energies towards fulfilling its core functions of managing and maintaining the HDB estates in Aljunied-Hougang Town for our residents. As such, the Town Council will comply with the Rectification Order.

7. With regard to the Ministry's direction to spell out the steps taken to comply with its direction, we inform you of the following:

- (a) With effect from 16 January 2020, MP Lim has been removed from being an authorised officer to unilaterally incur or approve expenditure on behalf of the Town Council. MP Low has no such authority under current arrangements;
- (b) With effect from 16 January 2020, MP Lim is no longer authorised to unilaterally accept or waive any quotation or tender for any stores, services or works on behalf of the Town Council. MP Low has no such authority under current arrangements;
- (c) With effect from 16 January 2020, MP Lim's and MP Low's votes at committee meetings involving procurement and expenditure will not be taken into account;
- (d) The Town Council will pass a resolution at its next meeting in February 2020 to remove MP Lim and MP Low as cheque signatories. In the meantime, the Town Council will not present cheques to them for signature.

8. This reply addresses paragraph 4 and 5 of your letter.

9. Thank you.

Yours sincerely,



Muhamad Faisal Bin Abdul Manap
Chairman
Aljunied-Hougang Town Council

Annex A: Second Minister for National Development's remarks in Parliament (abridged)

NMP Anthea Ong:Mr Speaker, I understand that this substantive Motion, when passed by the House, becomes a resolution of Parliament. A resolution of the House is not legislation, nor does it have any legal force. Given this, should the call for AHTC to discharge their responsibilities as proposed in part (iv) of the Motion – asking for this House to call for and influence AHTC to recuse the said Members of Parliament "from all matters relating to, and oversight over, financial matters" – be made by the Minister through the powers granted by the Town Councils Act instead of this House?

Under section 43(d) of the Act, it is expressively provided that if the Minister is of the opinion that there are deficiencies identified in the conduct of the affairs of the Town Council and/or an irregularity has occurred or is occurring in the financial affairs of the Town Council, the Minister may, by order, in writing, require the Town Council to "take specified remedial action to address the deficiencies and take specified action to correct the irregularity or to guard against the recurrence of irregularities or both."

2nd Minister Desmond Lee:.....And Ms Ong makes a point about section 43(d) of the Town Councils Act. I am familiar with that provision because I had to move those amendments in this very House to make sure that the regulators have the levers to act if we have to.

And section 43(d) comes after this saga has taken place in 2011. More importantly, the provision gives powers to the Minister after a report or compliance review has been undertaken under the Act as amended or after an investigation.

Be that as it may, ultimately, you have a judgment of the High Court by a Justice of the Supreme Court.

Quite apart from what regulatory powers there may be in this case or in future cases, we are really asking here in this House, not asking what directors outside this House should be doing; not asking what trustees outside should be doing, but what Members of this House reposed with the duties under the Town Councils Act to safeguard public monies.